

By: Senator(s) Blackmon, Johnson (19th),  
Canon, Thames, Hawks, Burton, Gollott, Walls

To: Judiciary

## SENATE BILL NO. 2894

1 AN ACT TO CODIFY SECTION 93-5-22, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE EQUITABLE DISTRIBUTION OF ASSETS ACQUIRED OR  
3 ACCUMULATED, AND DISTRIBUTION OF LIABILITIES INCURRED, DURING THE  
4 COURSE OF A MARRIAGE; TO PROVIDE EXCEPTIONS; TO CREATE A  
5 PRESUMPTION OF EQUAL DISTRIBUTION; TO PROVIDE FOR UNEQUAL  
6 DISTRIBUTION WHEN CERTAIN RELEVANT FACTORS EXIST; TO ENACT  
7 DEFINITIONS OF MARITAL AND NONMARITAL ASSETS AND LIABILITIES; TO  
8 MAKE CERTAIN PROVISIONS CONCERNING LUMP SUM ALIMONY; TO PROVIDE  
9 THAT THE COURT'S ORDER OF DISTRIBUTION OF ASSETS SHALL HAVE THE  
10 EFFECT OF A CONVEYANCE; TO PROTECT THE RIGHTS OF THIRD PARTIES;  
11 AND FOR RELATED PURPOSES. BE IT ENACTED BY THE LEGISLATURE OF  
12 THE STATE OF MISSISSIPPI:

13  
14 SECTION 1. The following provision shall be codified as  
15 Section 93-5-22, Mississippi Code of 1972:

16 93-5-22. (1) As used in this section:

17 (a) "Marital assets and liabilities" are those assets  
18 and liabilities which are not nonmarital and include:

19 (i) Assets acquired and liabilities incurred  
20 during the marriage, individually by either spouse or jointly by  
21 them;

22 (ii) The enhancement in value and appreciation of  
23 nonmarital assets resulting either from the efforts of either  
24 party during the marriage or from the contribution to or  
25 expenditure thereon of marital funds or other forms of marital  
26 assets, or both;

27 (iii) Interspousal gifts during the marriage; and

28 (iv) All vested benefits, rights and funds accrued  
29 during the marriage in retirement, pension, profit-sharing,  
30 annuity, deferred compensation and insurance plans and programs.

31 (b) "Nonmarital assets and liabilities" include:

32                   (i) Assets acquired and liabilities incurred by  
33 either party prior to the marriage, and assets acquired and  
34 liabilities incurred in exchange for such assets and liabilities.

35       The commingling of nonmarital property with other property of any  
36 type does not destroy the identity of the nonmarital property as  
37 nonmarital property;

38                   (ii) Assets acquired separately by either party by  
39 noninterspousal gift, bequest, devise or descent, and assets  
40 acquired in exchange for such assets;

41                   (iii) The enhancement in value and appreciation of  
42 nonmarital assets which is not brought about by the efforts of  
43 either party during the term of the marriage;

44                   (iv) All income derived from nonmarital assets  
45 during the marriage, except to the extent that the income was  
46 treated, used or relied upon by the parties as a marital asset;

47                   (v) Any real property held by the parties in joint  
48 tenancy, co-tenancy or tenancy by the entirety acquired prior to  
49 the marriage shall be presumed to be a nonmarital asset; and

50                   (vi) Assets and liabilities excluded from marital  
51 assets and liabilities by written agreement of the parties, and  
52 assets acquired and liabilities incurred in exchange for such  
53 assets and liabilities.

54       (2) In a proceeding for divorce from the bonds of matrimony,  
55 in addition to all other remedies available to a court to do  
56 equity between the parties, the court shall set apart to each  
57 spouse that spouse's nonmarital assets and liabilities, and in  
58 distributing the marital assets and liabilities between the  
59 parties, the court shall begin with the presumption that the  
60 distribution should be equal, unless there is a justification for  
61 an unequal distribution based on all relevant factors, including:

62                   (a) The contribution to the marriage by each spouse,  
63 including contributions to the care and education of the children  
64 and services as homemaker;

65           (b) The economic circumstances of the parties;

66           (c) The duration of the marriage;

67           (d) Any interruption of personal careers or educational  
68 opportunities of either party;

69           (e) The contribution of one (1) spouse to the personal  
70 career or educational opportunity of the other spouse;

71           (f) The desirability of retaining any asset, including  
72 an interest in a business, corporation, or professional practice,  
73 intact and free from any claim or interference by the other party;

74           (g) The contribution of each spouse to the acquisition,  
75 enhancement, and production of income or the improvement of, or  
76 the incurring of liabilities to, both the marital assets and the  
77 nonmarital assets of the parties;

78           (h) The desirability of retaining the marital home as a  
79 residence for any dependent child of the marriage, or any other  
80 party, when it would be equitable to do so, it is in the best  
81 interest of the child or that party, and it is financially  
82 feasible for the parties to maintain the residence until the child  
83 is emancipated or until exclusive possession is otherwise  
84 terminated by a court of competent jurisdiction. In making this  
85 determination, the court shall first determine if it would be in  
86 the best interest of the dependent child to remain in the marital  
87 home; and, if not, whether other equities would be served by  
88 giving any other party exclusive use and possession of the marital  
89 home;

90           (i) The intentional dissipation, waste, depletion or  
91 destruction of marital assets after the filing of the complaint or  
92 within two (2) years prior to the filing of the complaint;

93           (j) The tax consequences of the property division upon  
94 the respective awards to be made to each spouse;

95           (k) The relative fault, if any, of the parties;

96           (l) Any other factors necessary to do equity and  
97 justice between the parties.

98           (3) If the court awards any cash payment for the purpose of  
99 equitable distribution of marital assets, to be paid in full or in  
100 installments, the full amount ordered shall vest when the judgment  
101 is awarded and the award shall not terminate upon remarriage or  
102 death of either party, unless otherwise agreed to by the parties,  
103 but shall be treated as a debt owed from the obligor or the  
104 obligor's estate to the obligee or the obligee's estate, unless  
105 otherwise agreed to by the parties.

106           (4) In any contested divorce action wherein a stipulation  
107 and agreement has not been entered and filed, any distribution of  
108 marital assets or marital liabilities shall be supported by  
109 factual findings in the judgment or order. The judgment or order  
110 relating to the distribution of all marital assets and marital  
111 liabilities, whether equal or unequal, shall include specific  
112 written findings of fact as to the following:

113                   (a) Clear identification of nonmarital assets and  
114 ownership interests;

115                   (b) Identification of marital assets, including the  
116 individual valuation of significant assets, and designation of  
117 which spouse shall be entitled to each asset;

118                   (c) Identification of the marital liabilities and  
119 designation of which spouse shall be responsible for each  
120 liability;

121                   (d) Any other findings necessary to advise the parties  
122 or the reviewing court of the trial court's rationale for the  
123 distribution of marital assets and allocation of liabilities.

124           (5) A spouse to whom a liability has been assigned by order  
125 of the court shall be responsible for making all payments on a  
126 timely basis. Upon failure to do so, the other spouse may make  
127 the required payments if legally obligated to do so or to protect  
128 property awarded to the other spouse which secures the obligation.  
129 Any payments so made may be recovered from the defaulting spouse  
130 with interest at the legal rate plus reasonable attorney's fees or

131 may be set off against payments, other than child support, due the  
132 defaulting spouse.

133           (6) (a) The order distributing assets shall have the effect  
134 of a duly executed instrument of conveyance, transfer, release or  
135 acquisition which is recorded in the county where the land is  
136 located when the final order, or a certified copy of the final  
137 order, is properly recorded in the official land records of the  
138 county in which the land is located.

139           (b) If an appeal has been taken from the final order of  
140 the trial court, a certified copy of the appellate court's mandate  
141 affirming the transaction shall be attached to the order of the  
142 trial court at the time of recording. With respect to personal  
143 property, the final order of the trial court shall be effective as  
144 a bill of sale and, in the case of a titled motor vehicle, as an  
145 assignment of title by the registered owner of the vehicle.

146           (c) For all purposes of this section, the final order  
147 of the trial court shall not affect title to property, real or  
148 personal, until the time for all appeals has expired or, if an  
149 appeal is taken, the appellate court has issued its mandate  
150 affirming the transfer of title.

151           (7) Filing of a joint tax return shall not be used to  
152 determine nonmarital assets or liabilities as marital assets or  
153 liabilities.

154           (8) The cut-off date for determining assets and liabilities  
155 to be identified or classified as marital assets and liabilities  
156 is the earliest of the following dates: the date of the filing of  
157 a complaint for divorce from the bonds of matrimony, the date of  
158 final separation of the parties, or the date that the judge  
159 determines is just and equitable under the circumstances. The  
160 date for determining value of assets and the amount of liabilities  
161 identified or classified as marital is the date or dates as the  
162 judge determines is just and equitable under the circumstances.  
163 Different assets may be valued as of different dates, as, in the

164 judge's discretion, the circumstances require.

165 (9) All assets acquired and liabilities incurred by either  
166 spouse subsequent to the date of the marriage and not specifically  
167 established as nonmarital assets or liabilities are presumed to be  
168 marital assets and liabilities. Such presumption is overcome by a  
169 showing that the assets and liabilities are nonmarital assets and  
170 liabilities. The presumption is only for evidentiary purposes in  
171 the divorce proceeding and does not vest title. Title to disputed  
172 assets, as between spouses, shall vest only by the order of a  
173 court. This section does not require the joinder of spouses in  
174 the conveyance, transfer, encumbrance or hypothecation of a  
175 spouse's individual property, affect the laws of descent and  
176 distribution, affect the laws concerning child support nor  
177 establish community property in this state.

178 (10) The court may provide for equitable distribution of the  
179 marital assets and liabilities without regard to alimony for  
180 either party. After the determination of an equitable  
181 distribution of the marital assets and liabilities, the court  
182 shall consider whether any alimony shall be ordered.

183 (11) To do equity between the parties, the court shall take  
184 into account any evidence as to the taxation consequences of its  
185 order and may, in lieu of or to supplement, facilitate or  
186 effectuate the equitable division of marital assets and  
187 liabilities, order a monetary payment in a lump sum or in  
188 installments paid over a fixed period of time.

189 (12) With respect to real property, the provisions of this  
190 section shall not affect the rights and interests of bona fide  
191 purchasers and encumbrancers for value without notice, and the  
192 filing of the complaint for divorce in the county where the land  
193 is located shall constitute constructive notice. Neither shall  
194 the provisions of this section affect the rights of persons who  
195 are not parties to the divorce proceeding pursuant to contracts,  
196 promissory notes, security agreements, mortgages and deeds of

197 trust or other undertakings made in good faith and without intent  
198 to impair the rights of either spouse under this section.

199 SECTION 2. This act shall take effect and be in force from  
200 and after its passage.